

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the)	
Application of Dayton Power and Light)	Case No. 18-1875-EL-GRD
Company for Approval of Its Plan to)	
Modernize Its Distribution Grid.)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	Case No. 18-1876-EL-WVR
Approval of A Limited Waiver of Ohio)	
Adm. Code 4901:1-18-06(A)(2).)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	Case No. 18-1877-EL-AAM
Approval of Certain Accounting Methods.)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Administration of the Significantly)	Case No. 19-1121-EL-UNC
Excessive Earnings Test under R.C.)	
4928.143(F) and Ohio Adm. Code 4901:1-)	
35-10 for 2018.)	

In the Matter of the Application of the)	
Dayton Power and Light Company for A)	
Finding That Its Current Electric Security)	Case No. 20-680-EL-UNC
Plan Passes the Significantly Excessive)	
Earnings Test and More Favorable in the)	
Aggregate Test in R.C. 4928.143(E).)	

In the Matter of the Application of the)	
Dayton Power and Light Company for)	
Administration of the Significantly)	Case No. 20-1041-EL-UNC
Excessive Earnings Test under R.C.)	
4928.143(F) and Ohio Adm. Code 4901:1-)	
35-10 for 2019.)	

TESTIMONY
OPPOSING THE SETTLEMENT AND MAKING CONSUMER RECOMMENDATIONS
OF
EDWARD W. HILL, Ph.D.

On Behalf of
The Office of the Ohio Consumer's Counsel
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DECEMBER 17, 2020

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1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.***

4 ***A1.*** My name is Edward W. Hill; I am also referred to as Ned Hill. I am Professor of
5 Economic Development at the John Glenn College of Public Affairs and the section
6 on City and Regional Planning at The Ohio State University. I am also Senior
7 Research Associate of OSU's Ohio Manufacturing Institute. My business address is
8 Page Hall, 1810 College Road, Columbus, Ohio 43214.

9

10 ***Q2. ON WHOSE BEHALF AND IN WHAT CAPACITY ARE YOU TESTIFYING?***

11 ***A2.*** I am testifying on behalf of the Office of the Ohio Consumer's Counsel ("OCC").
12 My testimony is my own and does not represent the positions or views of The Ohio
13 State University, The Ohio Manufacturing Institute, The John Glenn College of
14 Public Affairs, or the College of Engineering. I am testifying on behalf of OCC,
15 without remuneration.

16

17 ***Q3. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND,***
18 ***PROFESSIONAL QUALIFICATIONS, AND EMPLOYMENT EXPERIENCE.***

19 ***A3.*** I graduated from the University of Pennsylvania with a bachelor's degree in
20 economics and urban studies in 1973. After spending a year in a doctoral program
21 at the University of Chicago, I attended the Massachusetts Institute of Technology
22 where I earned a master's degree in City and Regional Planning and a Ph.D. in

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1 Urban and Regional Planning and Economics in 1981. The doctoral program was a
2 collaboration between the two departments. My doctoral field examinations in
3 economics were in industrial organization and regulation, labor economics, and
4 urban and regional economics. In the Department of Urban Studies and Planning
5 my examinations were in regional economic development.

6
7 I was a member of the Cleveland State University faculty from 1985 until the end of
8 June 2015. During my 30 years at Cleveland State, I rose through the academic
9 ranks: Assistant Professor, Associate Professor, Professor and Distinguished
10 Scholar of Economic Development, and then Dean. All of these positions were in
11 the Maxine Goodman Levin College of Urban Affairs. I was Cleveland State
12 University's Vice President of Economic Development and a member of the cabinet
13 of Presidents Schwartz and Bergman.

14
15 The Ohio State University invited me to join its interdisciplinary Discovery Theme
16 in Materials and Manufacturing for a Sustainable World beginning in the 2015-16
17 academic year.

18
19 I use public choice economic concepts extensively in my public policy work, my
20 work in economic development, and in my teaching. This spring I will teach a
21 graduate seminar in the Glenn College of Public Affairs titled *Public Affairs and*
22 *Public Choice*. I also introduce students to public choice concepts and theory in my
23 undergraduate fall course, Introduction to Public Affairs.

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1 Ohio Governors Taft, Strickland, Kasich, and DeWine, as well as former Ohio
2 Speaker of the House of Representative Batchelder, have appointed me to various
3 state commissions and boards dealing with economic and workforce development
4 and public finance. The Cuyahoga County Mayors and Managers Association
5 recognized my service to the communities of Northeast Ohio in 2016 with its
6 George V. Voinovich Municipal Service Award. And the Ohio Manufacturers
7 Association's Board of Directors presented me with its Legacy Award in 2005, and
8 again in 2016, for my work on behalf of Ohio's manufacturers. The 2005 award
9 was for my work associated with business tax reform, and the 2016 award was for
10 my work to protect electricity deregulation.

11
12 My academic research focuses on the areas of urban and regional economic
13 development policy, the operation of regional labor markets, regional economic
14 resilience, and industry studies with an emphasis on manufacturing. This research
15 emphasizes issues that are important to the state of Ohio's economy; that is what
16 interested me in energy economics in 2010.

17
18 I participated in much of the energy research conducted at Cleveland State
19 University's Levin College. I led the research and writing of the *Ohio Utica Shale*
20 *Gas Monitor* and was one of the authors of *An Analysis of the Economic Potential*
21 *for Shale Gas Formations in Ohio* (February 2012). I was also one of the co-

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1 investigators and co-authors of two studies on the economic impact of the
2 deregulation of Ohio's electricity generating markets.¹

3
4 I have testified before the Public Utilities Commission of Ohio ("PUCO") and the
5 Ohio General Assembly on public policies related to electricity regulation since
6 December 2014. I testified on behalf of the Ohio Manufacturers' Association
7 Energy Group (OMAEG) against a Power Purchase Agreement proposed by
8 FirstEnergy to support its failing nuclear power plants as well as against its
9 proposed Electric Security Plan. I also testified for the OMAEG against American
10 Electric Power Company's Electric Security Plan and its desire to bailout its
11 ownership interest in the failing Ohio Valley Electric Corporation's coal-fired
12 power plant campuses in Ohio and Indiana. I testified on my own behalf against
13 House Bill 6 in committee hearings in both the Ohio House of Representatives and
14 the Ohio Senate. In all of these engagements I was not paid.

15
16 **II. PURPOSE AND ARGUMENT**

17
18 ***Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

19 ***A4.*** I am testifying in opposition to the October 23, 2020 Stipulation and
20 Recommendation filed in this case (the "Settlement" or "DP&L's Settlement") and

¹ *Electricity Customer Choice in Ohio: How competition has outperformed traditional monopoly regulation.* Northeast Ohio Public Energy Council, January 2017 and *Update on Electricity Customer Choice in Ohio: Competition continues to outperform traditional monopoly regulation.* Northeast Ohio Public Energy Council, August 2019.

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1 making consumer recommendations. Through my testimony, I demonstrate that the
2 Settlement fails the PUCO's three-prong test for PUCO approval of settlements. In
3 fact, it violates all three prongs: it is not the product of serious bargaining, it does
4 not benefit customers or the public interest, and it violates regulatory principles and
5 practices.

6
7 The focus of my testimony is on what I refer to as the *redistributive coalition*. What
8 I mean by this is that in PUCO proceedings such as this one, the utility works to
9 gain the signatures of a group of parties—the coalition—that on its face makes it
10 seem like the settlement has widespread support from diverse parties. The utility
11 then touts this support, claiming that it shows that the settlement benefits customers
12 and is good for the public and state of Ohio at large. But as I explain below, the
13 signatories do not “represent a wide range of interests.” Instead, DP&L has paid for
14 the support of various signatory parties that represent their own special interests. An
15 unfortunate effect of this process is that, under the PUCO's settlement standard,
16 parties are pressed to join the redistributive coalition to avoid missing out on cash
17 or other benefits if they don't join.

18
19 Specifically, the signatories are a coalition of self-interested parties – a coalition of
20 convenience. Through the settlement of DP&L's cases they influence public policy
21 in deleterious ways, redistribute income in ways that harm electricity consumers,
22 privatize (in effect) part of the state's economic development and health care policy

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1 making, and unfairly have government pick winners and losers among competing
2 private businesses.

3 This type of utility negotiation – enabling the procurement of settlement signatures
4 for cash, payments for electricity used, and investments that benefit a small number
5 of stakeholders – is inappropriate in a regulatory process.

6
7 **Q5. IS THE TERM “REDISTRIBUTIVE COALITION” WELL RECOGNIZED IN**
8 **THE ACADEMIC FIELDS OF PUBLIC POLICY AND ECONOMICS?**

9 **A5.** Yes. The concept is one of the tools provided to public policy analysis by public
10 choice theory. It is well established, elements of the concept appeared as early as
11 1965 with economist Mancur Olson’s book *The Logic of Collective Action*.² The
12 concept was also developed by another economist, George Stigler in 1970,³ with
13 further refinements by Olson in his 1982 book *The Rise and Decline of Nations*.⁴

14
15 **Q6. WHAT IS A “REDISTRIBUTIVE COALITION”?**

16 **A6.** A redistributive coalition is a relatively small group that uses political or regulatory
17 processes to secure benefits that cannot be earned in the competitive market. In
18 other words, the coalition uses its political power and knowledge of regulatory

² Mancur Olson. *The Logic of Collective Action* (Harvard University Press, 1965).

³ George T. Stigler. 1970. Director's Law of Public Income Redistribution, *Journal of Law and Economics* 13(1): 1-10.

⁴ *The Rise and Decline of Nations* (Yale University Press, 1982), especially pp. 43-47; also see Gordon Tullock. *The Economics of Special Privilege and Rent Seeking* (Kluwer Academic Publishers, 1989); reprinted as “Rent Seeking: An Overview,” in *The Rent-Seeking Society* (Liberty Fund, 2005), especially pp. 48-53.

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1 processes to generate either revenue streams, market power that can increase
2 revenue, or outcomes that are part of a member's advocacy agenda.

3 A redistributive coalition depends on the power of the state to deliver the monetary
4 rewards desired by its members (these rewards are called *rents* because the
5 revenues or benefits are not earned through market processes) or non-monetary
6 benefits. These benefits are paid for by passing the costs of the desired rewards onto
7 the much larger group of utility customers (or taxpayers in other contexts) that are
8 not part of the coalition. How the revenue is generated to pay for these rewards is
9 immaterial as long as benefits are derived through political or regulatory action and
10 the cost of paying for the rewards are shifted onto the large, unorganized portion of
11 society who are not members of the coalition.

12
13 Each member of the coalition joins based on their own self-interest, which can
14 result in a coalition having multiple objectives due to the horse-trading that takes
15 place when the coalition is formed. What is key is that they support each other in
16 pursuit of the desired *package* of rewards for coalition members—rewards that are
17 ultimately paid by non-coalition members, including residential consumers.

18
19 ***Q7. WHY ARE REDISTRIBUTIVE COALITIONS SUCCESSFUL IN SECURING***
20 ***BENEFITS FOR THEIR MEMBERS AT THE EXPENSE OF OTHERS?***

21 ***A7.*** The members of a redistributive coalitions are small in number relative to the rest of
22 the population. They most often share a homogeneous set of objectives. This keeps

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1 organizing costs low relative to the anticipated flow of the benefits. The
2 redistributive coalition is also small.

3
4 The coalitions that form in response to negotiations at the PUCO are not seeking a
5 single, overarching public policy objective that is mutually shared. Instead, the
6 coalition unites around the dominant objective, or objectives, of the coalition's
7 organizer and then each of the other members add rewards that they value and are
8 achievable (and are loosely tied to the settlement) in exchange for their public
9 support for the settlement package. What the organizing company is seeking from
10 the coalition is the veneer of widespread public support for the dominant objective
11 of the organizer—the investor-owned utility. Then, in a legally binding *quid pro*
12 *quo*, which is the settlement, the coalition supports the entire package. Limiting the
13 size of the coalition is especially important when there are different goals involved
14 because each additional goal complicates the bargaining and the expense.
15 Importantly, the group that *is not* part of the redistributive coalition is large and
16 heterogenous making it difficult and expensive to organize.

17
18 Redistributive coalitions work because they spread the cost of their non-market-
19 derived benefits over a large population, in this case captive residential customers
20 and unorganized businesses. That is, while the *benefits* to the coalition members are
21 large (such as for DP&L) and concentrated, the *costs* are paid for by the entire
22 population (for example, hundreds of thousands or millions of utility customers).

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1 Thus, the per-customer cost might appear insubstantial, making the paying of the
2 extract benefits (such as various DP&L charges) politically palatable.

3
4 Redistributive coalitions can also be intentionally opaque. By making their
5 proposals as opaque and technical as possible, it becomes harder for others to join
6 the coalition. This increases the cost of obtaining and of understanding the
7 information and keeps the policy arena an insider's game. It also makes it less
8 obvious that there is a redistribution at all, as the general public may be unable to
9 understand the nature or magnitude of the benefits that are being shunted to the
10 coalition members.

11
12 ***Q8. WHAT HARM IS CAUSED BY REDISTRIBUTIVE COALITIONS?***

13 ***A8. The Economist*** summarized the harm of redistributive coalitions in its 1998 obituary
14 of Olson: each member of a coalition “gains, then fiercely defends, some benefit for
15 its members, usually with government help. *Subsidies, trade protections and other*
16 *economic distortions accumulate*, and resources increasingly flow to a specialized
17 class of lawyers, bureaucrats and lobbyists *who know how to work the system*.
18 Redistributive struggles displace productive ones. The result, if medicine is not
19 taken, is a pattern of economic decline.”⁵ What holds for nations also applies to a
20 state, such as Ohio, with lagging economic performance.

⁵ “Mancur Lloyd Olson, scourge of special interests, died on February 19th, aged 66.” *The Economist*, March 5, 1998 (emphasis added), available at <https://www.economist.com/obituary/1998/03/05/mancur-olson>.

1 ***Q9. PLEASE EXPLAIN HOW THE SIGNATORY PARTIES TO THE***
2 ***SETTLEMENT FIT THE DEFINITION OF A REDISTRIBUTIVE***
3 ***COALITION.***

4 ***A9.*** The signatories form a classic redistributive coalition. They intervene in PUCO
5 proceedings so that money paid to the utility, in this case DP&L, by other
6 customers (including residential customers') can be *redistributed* to them in the
7 form of cash or other benefits in exchange for their signatures on a settlement. The
8 signatories are essentially limited to those who regularly interact with the PUCO.
9 They opportunistically form *redistributive coalitions* with slightly varying
10 membership as each regulatory opportunity (*i.e.*, a significant PUCO proceeding)
11 presents itself. The signatory parties do not represent any interests other than their
12 own when they bargain with the utility. The practice of the utility paying for
13 endorsements of signatory parties has evolved over time and, as a result of that
14 evolution, utilities have become more efficient at forming redistributive coalitions.

15
16 ***Q10. HOW DOES ONE BECOME A MEMBER OF A REDISTRIBUTIVE***
17 ***COALITION?***

18 ***A10.*** The necessary condition for becoming a member of the redistributive coalition is
19 given in the Settlement: "All parties were invited to discuss and negotiate the
20 Stipulation, and it was openly negotiated among those parties that choose to
21 participate; no party was excluded from the negotiations."⁶ This is correct as far as

⁶ Settlement at 2.

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1 it goes; however, the preceding sentence states: “This Stipulation is a product of
2 lengthy, serious arm’s-length bargaining among the Signatory Parties (all of whom
3 are capable, knowledgeable, and represented by counsel) with the participation of
4 the Staff of the Commission (“Staff”).” In other words, the redistributive coalition
5 is open to all parties that have knowledge about the opportunity to intervene and
6 have access to lawyers who regularly practice before the PUCO. Those who don’t
7 have the sophistication, funding, or awareness of the PUCO’s process are left out.

8
9 ***Q11. ONCE THE REDISTRIBUTIVE COALITION IS FORMED, HOW DO ITS***
10 ***MEMBERS (INCLUDING THE UTILITY) TAKE ADVANTAGE OF IT TO***
11 ***THE DETRIMENT OF RESIDENTIAL AND OTHER CONSUMERS?***

12 ***A11.*** The list of signatories is carefully constructed following a formula, or recipe, that
13 was used in the ESP settlements for FirstEnergy, AEP Ohio, and DP&L to
14 “demonstrate” the representation of a wide public support for their goals. The
15 reason why this list is limited to these three cases is that I participated as an expert
16 witness in the FirstEnergy and AEP Ohio cases and read the Opinion and Order in
17 DP&L’s ESP case in preparing this testimony.⁷ I also prepared a database on
18 benefits won and costs incurred by these redistributive coalitions as part of an
19 academic research project.

20

⁷ Opinion and Order, Case No. 16-395-EL-SSO, Case No. 16-396-EL-ATA, and Case No. 16-307-EL-AAM, October 20, 2017

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1 The critical sentence in the DP&L Settlement is at the end of the first paragraph on
2 its second page: “This Stipulation accommodates the diverse interests *represented*
3 by the Signatory Parties and is entitled to careful consideration by the
4 Commission.”⁸

5
6 DP&L witness Schroder likewise touts the alleged diversity of the signatory parties:
7 “The Stipulation is supported by *parties representing* a wide range of interests,
8 including the interests of Dayton, the largest municipality in DP&L’s service
9 territory (which represents itself and its residents), a representative of residential
10 low-income customers, three state-wide organizations of large industrial customers,
11 one large industrial customer, one of the largest supermarket chains in the country,
12 a state-wide organization representing hospitals in DP&L’s service territory, a
13 large, local, university, four environmental groups, a provider of competitive retail
14 electric service, and four other parties that do business and represent interests in the
15 smart grid field.”⁹

16
17 Each of the business, commercial, and governmental signatories represent no
18 interests other than their own. They do not represent a broader group and do not
19 show, let alone prove, that the Settlement is good public policy for Ohio and its
20 utility consumers. The business, commercial, and governmental signatories do not

⁸ Settlement at 2 (emphasis added).

⁹ Schroder Testimony at 13 (emphasis added).

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1 attempt to secure benefits through the PUCO process for other similarly situated
2 entities. They only secure limited benefits for themselves and their members.

3
4 The signatures mean just one thing: that those particular signatories were able to
5 extract benefits in exchange for their signatures, benefits that flow to their own
6 bottom lines, members, or constituents. These are benefits that are either directly or
7 indirectly paid for by DP&L's residential and commercial customers, with the
8 exception of those that are members of the coalition.

9
10 ***Q12. WHAT ARE SOME EXAMPLES OF THE REDISTRIBUTIONS PROVIDED***
11 ***TO SIGNATORY PARTIES UNDER THE SETTLEMENT?***

12 ***A 12.*** Benefits for a particular supermarket do not flow to its competitors.¹⁰ The
13 Settlement gives the supermarket a benefit that is paid for by all customers of
14 DP&L, even if the Settlement does expressly say that a benefit is paid by all
15 customers.¹¹ And, through this settlement, the state of Ohio is showing preference
16 for one grocery store over another.

¹⁰ Settlement at 37.

¹¹ As I explain below, DP&L claims that it pays for some of these costs with "shareholder" dollars is inaccurate. DP&L is charging customers nearly \$80 million per year under the "rate stabilization rider," is are not related to any operating or capital costs that DP&L incurs. In other words, this entire \$80 million per year revenue stream is intended to go directly to the ownership of DP&L and to shore-up DP&L's balance sheet. So, in effect, DP&L is taking just a small piece of the customer funds from the rate stabilization rider and redistributing it to the signatory parties or projects that are endorsed by one of the signatory parties.

1 The Settlement assigns benefits to three larger business trade organizations.¹² The
2 benefits are restricted to their members. Having the state of Ohio's regulatory body
3 (the PUCO) create discriminating revenue-generating opportunities is bad public
4 policy.

5
6 **III. EVIDENCE OF THE EXISTENCE OF REDISTRIBUTIVE COALITIONS**

7
8 ***Q13. IS THE REDISTRIBUTIVE COALITION LIMITED TO JUST THIS CASE***
9 ***INVOLVING DP&L AND ITS SETTLEMENT?***

10 ***A13.*** Far from it. In just the past few years, I have personally witnessed the consistent
11 creation of these types of coalitions in PUCO proceedings. I provided testimony
12 against FirstEnergy's request for nuclear power plant subsidies in 2014 as part of its
13 ESP case. That was the case where I first saw these coalitions being built (though I
14 understand that the process of utilities securing similar settlements among a similar
15 group of parties long predates that case). The pattern reoccurred as the PUCO
16 considered the Electric Security Plans of AEP Ohio and DP&L.

17
18 ***Q14. IS THE REDISTRIBUTIVE COALITION THE SAME IN EACH PUCO***
19 ***PROCEEDING?***

20 ***A14.*** Although not literally identical in each PUCO case, there is a core group of parties
21 that consistently participate in PUCO electric proceedings, especially larger

¹² Settlement at 35-37.

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1 proceedings where more money is available for redistribution. There are similarities
2 in the types of organizations that signed on in support of each ESP, and many of
3 those same parties are represented here as signatories to the Settlement.

4
5 In sum, the signatory parties predominantly represent either their own interests and
6 not those of customers in general or, if it is a business trade association, its
7 membership. They are not working for the benefit of similar parties. DP&L's
8 Settlement term with the supermarket does not provide benefits for all grocery
9 stores. The Settlement term with the business groups does not provide benefits for
10 all businesses in Ohio. The Settlement term with the car manufacturer does not
11 provide for broad automaker benefits. The Settlement term with the city does not
12 provide benefits for all municipalities within DP&L's service territory. The
13 Settlement term with the marketer does not provide benefits for all energy
14 marketers. The Settlement term with the university does not provide benefits for all
15 local universities. The Settlement term with the low-income weatherization group
16 does not provide benefits for all weatherization providers to low-income families.¹³

17
18 Collectively, they are not "*parties representing a wide range of interests*" as
19 asserted by DP&L witness Schroder.

¹³ Settlement at 33-42.

1 ***Q15. HOW MUCH MONEY IS BEING REDISTRIBUTED TO THE SIGNATORY***
2 ***PARTIES IN EXCHANGE FOR THEIR SIGNATURES?***

3 ***A15.*** There are about \$7.0 million in direct payouts to members of the redistributive
4 coalition other than DP&L listed in the Settlement. Of that amount, \$800,000 will
5 be paid for by customers through rider IIR. Payments for the remaining \$6.2 million
6 is attributed as being made by DP&L's shareholders.

7 But these are not the only benefits delivered to the signatory parties. The Settlement
8 contains a variety of handouts in the form of electricity payments and discounts,
9 including numerous payments of \$0.004 per kWh of electricity used by
10 nonresidential customers. These per kWh payments are opaque and not transparent.
11 With the Settlement not containing calculations about the likely benefit to
12 individual group members, it is not publicly known how much these discounts are
13 worth to each signatory party, or, in many cases, even what company will
14 ultimately benefit.

15
16 Fortunately, however, DP&L filed its 10-Q report with the Securities and Exchange
17 Commission for the quarter that ended on September 30, 2020. There, the company
18 stated that it expects to spend \$30 million over four years on providing flow-
19 through benefits to coalition members.¹⁴ The spending from cash flow generated by
20 the company's profits averages \$7.5 million a year.

¹⁴ From SEC form 10-Q: "DP&L shareholder funding, in an aggregate amount of approximately \$30.0 million over four years, for certain economic development discounts, incentives, and grants to certain commercial and industrial customers, including hospitals and manufacturers, assistance for low-income customers as well as the residents and businesses of the City of Dayton, and promotion of solar and resiliency

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1 ***Q16. GIVEN THAT THE SETTLEMENT SAYS THAT MOST OF THESE***
2 ***PAYMENTS (OR BENEFITS) TO SETTLEMENT SIGNATORIES WILL BE***
3 ***FUNDED WITH DP&L SHAREHOLDER DOLLARS, IS THIS SETTLEMENT***
4 ***REALLY THE TYPE OF REDISTRIBUTIVE COALITION THAT YOU***
5 ***DESCRIBE ABOVE?***

6 ***A16.*** Yes, it absolutely is. DP&L's money for the Settlement payments does not really
7 come from the stockholders. The money comes from DP&L's customers. As part
8 of the Settlement, DP&L will be allowed to keep charging customers its so-called
9 "Rate Stabilization Charge" or "RSC." The Rate Stabilization Charge that DP&L's
10 customers are paying does not compensate DP&L for any costs that DP&L actually
11 incurs. It is a bailout intended by the PUCO to improve DP&L's financial structure
12 and credit rating. There are no costs associated with non-avoidable rider RSC and
13 the rider is not associated with any investment in the company's capital stock. As
14 OCC witness Kahal testified, over the roughly four-year term of the Settlement,
15 customers will pay more than \$300 million to DP&L under the Rate Stabilization
16 Charge.¹⁵

17
18 The \$300 million generated by rider RSC is termed "shareholders money" by the
19 Company. The Settlement calls for 10-percent of the revenue from rider RSC to be

development within DP&L's service territory." Dayton Power & Light Company, Form 10-Q for the quarter ending September 30, 2020, link associated with \$30.0 million in the fifth bullet on page 18.

https://www.sec.gov/ix?doc=/Archives/edgar/data/27430/000078725020000061/dpl-20200930.htm#i49975861c574421f887c0904ece3405f_61.

¹⁵ See Direct Testimony of Matthew I. Kahal on behalf of the Office of the Ohio Consumers' Counsel.

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1 diverted to the signatory parties as an inducement to sign the Settlement. DP&L is
2 left with \$270 million in no-strings-attached cash. And those who are not part of the
3 redistributive coalition —residential customers, small business customers, large
4 business customers who aren't signatories, municipalities other than the one that
5 signed, and others—pay for all of it.

6
7 Any claim that DP&L's shareholders, rather than its customers, are paying for the
8 benefits to the signatory parties is either mistaken or an accounting fiction.

9
10 ***Q17. HOW DO THE SIGNATORY PARTIES THAT ARE NOT GETTING DIRECT***
11 ***PAYOUTS, LIKE CERTAIN ENVIRONMENTAL GROUPS AND SMART***
12 ***GRID VENDORS, FACTOR INTO YOUR ANALYSIS?***

13 ***A17.*** Some of the signatory parties are not receiving cash payouts or rate discounts, but
14 they still receive direct benefits under the Settlement. For example, the Settlement
15 provides \$450,000 per year to subsidize smart thermostats. This directly benefits the
16 businesses of a smart thermostat coalition¹⁶ (which incidentally is a limited
17 coalition, as it consists of just two large companies who have smart thermostat
18 businesses, among other things). I note, however, that the subsidizing of smart
19 thermostats could also benefit other smart thermostat manufacturers who are not
20 signatory parties. The Settlement also includes funding for a “water heater
21 controller Pilot” in 200 homes, which will directly benefit a signatory party whose

¹⁶ Settlement at 18.

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1 business involves selling water heater controllers.¹⁷ Both of these programs are paid
2 out of company profits that I associate with Rider RSC.

3
4 Two capital programs paid by the company's Infrastructure Investment Rider
5 (IIR).¹⁸ The Electric vehicle rebate and charging station program is expected to cost
6 \$5.1 million and the Customer Information System is listed as having a cost of \$8.8
7 million.¹⁹ Some signatory industry associations and companies benefit from these
8 two investments.

9
10 With respect to environmental parties, it seems clear to me that their interests in the
11 Settlement are in the funding that customers will provide for smart grid
12 investments, which could lead to environmental benefits. The environmental parties
13 did not intervene in any of the other cases included in the Settlement. So although
14 they may not get cash payouts under the Settlement, they still contribute to the
15 creation of the redistributive coalition by adding another "check box" for the PUCO
16 to say that the Settlement is green. The environmental parties do not represent the
17 consumers that will ultimately pay the high cost of the Settlement.

18

¹⁷ Settlement at 30-32.

¹⁸ Rider IIR is described in the Stipulation at 5.

¹⁹ Settlement at 13-18

1 ***Q18. HOW DOES YOUR DISCUSSION OF THE REDISTRIBUTIVE COALITION***
2 ***TIE INTO THE PUCO'S THREE-PRONG TEST?***

3 ***A18.*** The existence of the redistributive coalition, and the benefits provided to its
4 members under the Settlement, demonstrate that the Settlement fails each of the
5 three prongs of the PUCO's three-prong test.

6
7 ***Q19. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE FIRST***
8 ***PRONG OF THE TEST, THAT THE SETTLEMENT MUST BE THE***
9 ***PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE AND***
10 ***KNOWLEDGEABLE PARTIES?***

11 ***A19.*** First, I note that the first prong of the test—requiring parties to be capable and
12 knowledgeable—is problematic in its own right because it suggests that less
13 sophisticated parties do not have a place in PUCO settlements. This further
14 solidifies the redistributive coalition's hold over the PUCO process.

15
16 Second, under the PUCO's settlement standard, parties in opposition are pressed to
17 join the redistributive coalition. The staff of the PUCO participates in the
18 bargaining and is in a position to signal when they favor a proposed settlement and
19 the window on bargaining is about to close. The opposition to the settlement can
20 maintain their opposition knowing that the settlement as proposed is likely to be
21 approved or they can join in and extract some direct benefit. The advantage for the
22 coalition is that late comers do not cost them anything. The formerly opposing party
23 is legally bound to support the settlement. And the PUCO commissioners are more

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1 likely to support the proposal. The PUCO should ban this practice of a utility
2 paying cash and cash equivalent benefits in exchange for signatures on a settlement.

3
4 Third, the existence of the redistributive coalition demonstrates why serious
5 bargaining did not occur. Serious bargaining would involve the utility making
6 material concessions for the benefit of all customers. Instead, DP&L got basically
7 most of what it wanted. The company's distribution modernization charge was
8 terminated when the Ohio Supreme Court invalidated a similar charge that was
9 assessed by FirstEnergy. DP&L got another four years of unearned revenue in the
10 form of continuing the \$79-million-per-year Rate Stabilization Charge, customer
11 funding for smart grid, and avoiding the potential of paying customers for profit-
12 related refunds.²⁰ In exchange, it "negotiated" \$30 million in payouts to signatory
13 parties—money that is redistributed from the \$300 million in Rate Stabilization
14 Charge money paid by customers.

15
16 Those not part of the redistributive coalition get higher utility bills. And various
17 businesses who are not Settlement signatories will compete with signatory parties
18 whose businesses are subsidized by the Settlement's government-sanctioned cash
19 payouts. Private businesses that are not part of the settlement not only have to
20 compete against competitors, that are signatories, but they also pay part of the
21 subsidy their competitors receive.

²⁰ See Direct Testimony of Daniel J. Duann, Ph.D. on Behalf of the Office of the Ohio Consumers' Counsel (Dec. 17, 2020).

1 ***Q20. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE SECOND***
2 ***PRONG OF THE TEST, THAT THE SETTLEMENT MUST BENEFIT***
3 ***CUSTOMERS AND THE PUBLIC INTEREST?***

4 ***A20.*** Customers that are not members of the redistributive coalition *do not* benefit from
5 the PUCO settlement process. The signatory parties create redistributive coalitions
6 for the purpose of gaining an advantage for themselves.

7
8 As I explained above, the Settlement is unfair for customers that are not part of the
9 redistributive coalition. Those customers will pay hundreds of millions of dollars in
10 subsidies to DP&L for the Rate Stabilization Charge, without experiencing any
11 direct benefits. They will pay more than \$100 million over four years for a smart
12 grid (that OCC is concerned about).²¹ And they will be denied an opportunity for
13 significant profit-related refunds (to which they may be entitled).²²

14
15 It is certainly true that *some* customers will benefit under the Settlement: the
16 signatory parties. But these customers represent a mere fraction of DP&L's
17 customer base. Residential customers (and especially residential customers not
18 living in the one city) are left out. Small and most mid-sized businesses are left out.
19 All kinds of other businesses are left out because they are not part of the small
20 group that figured out how to use the PUCO process for their own gain.

21

²¹ See Direct Testimony of Paul Alvarez on Behalf of the Office of the Ohio Consumers' Counsel (Dec. 17, 2020).

²² See Duann Testimony.

1 The beneficiaries of the Settlement are not diverse. The signatory coalition has the
2 appearance of diversity that in reality lacks the depth of real, meaningful, broad
3 participation in benefits across DP&L's service area.

4
5 For these reasons, the Settlement neither benefits consumers nor the public interest.

6
7 ***Q21. WHY DO YOU BELIEVE THAT THE SETTLEMENT FAILS THE THIRD***
8 ***PRONG OF THE TEST, THAT THE SETTLEMENT MUST BE CONSISTENT***
9 ***WITH REGULATORY PRINCIPLES AND PRACTICES?***

10 ***A21.*** Redistributive coalitions are a bad regulatory practice for settlements. DP&L's
11 Settlement features a redistributive coalition, and that is inconsistent with the third
12 prong of the settlement test.

13
14 Also, the PUCO should be observing an enforcing a regulatory principle of equity
15 for participants and outcomes in its processes. The Settlement featuring the
16 redistributive coalition is not providing an equitable process or outcome for the
17 general body of consumers.

18
19 Redistributive coalitions are a bad practice for public policy making. Public policy
20 demands that the PUCO protect a utility's customers from the potential for market
21 abuses. In the context of regulated monopolies like DP&L, we generally think of
22 this as protecting customers from price gouging that would otherwise occur due to

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1 the lack of competition. It violates basic regulatory principles when captive
2 customers subsidize utilities and their unregulated affiliates.

3
4 It is also bad public policy because the subsidies that flow to the utilities
5 compensate them for making bad business decisions. In the cases of FirstEnergy,
6 AEP, and DP&L my comment includes business decisions that went badly wrong
7 outside of the borders of the state of Ohio by their holding companies. It violates
8 basic regulatory principles when captive customers subsidize utilities and their
9 unregulated affiliates.

10
11 In terms of economic development, power is at the base of every supply chain in the
12 state, cushioning utilities from competition, subsidizing their loss-making decisions,
13 and allowing gold-plating of transmission and distribution assets means increased
14 operating costs, loss in competitive advantage, and economic deterioration. For
15 residential customers the implication is clear, their electricity costs go up and their
16 opportunity for work goes down. This results in residential customers in particular
17 paying unjust and unreasonable utility rates.

18
19 Redistributive coalitions are another example of market abuse. Because
20 membership in the club is exclusive and difficult, if not impossible to obtain for
21 many stakeholders (such as individual residential consumers, small businesses, and
22 others), the PUCO process devolves into a façade, where stakeholders pose as

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1 representatives of the public interest at large while actually working *against* that
2 very same public. This anticompetitive behavior harms competitive markets in
3 several ways. First, it increases some, but not all, customers' utility bills. This
4 results in unjust and unreasonable rates, especially for residential consumers.
5 Second, the members of the redistributive coalition gain a competitive advantage
6 over similar business that have not yet figured out how to game the system or who
7 lack the resources to do so if they wanted. This violates the regulatory principle
8 against subsidizing unregulated business and advances no conceivable public policy
9 goals.

10
11 A much better regulatory practice would be for the PUCO to support and approve
12 settlements that truly represent the broad interests of all customers, not narrow self-
13 interest of signatory parties

14
15 ***Q22. DOES THE PUCO'S SETTLEMENT STANDARD STIMULATE THE***
16 ***FORMATION OF REDISTRIBUTIVE COALITIONS?***

17 ***A22.*** Yes, redistributive coalitions are opportunity-driven. The PUCO's regulatory
18 process, involving the three-prong test for adopting settlements provides the
19 opportunity for redistributive coalitions.

20 The redistributive coalitions that have formed around Electric Security Plans and
21 this Settlement have had one dominant member—the investor-owned utility that is
22 the major beneficiary. In a 2008 FirstEnergy ESP case, Commissioner Cheryl
23 Roberto wrote in a concurring/dissenting opinion_ that “[B]ecause of the utility's

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1 ability to withdraw, the remaining parties certainly do not possess equal bargaining
2 power in an ESP action before the Commission. The Commission must consider
3 whether an agreed-upon stipulation arising under an ESP represents what the parties
4 truly view to be in their best interest -- or simply the best that they can hope to
5 achieve when one party has the singular authority to reject not only any and all
6 modifications proffered by the other parties but the Commission's independent
7 judgment as to what is just and reasonable." ."²³ Given that essentially all
8 settlements occur only with the utility's approval, Commissioner Roberto's concern
9 has even broader applicability to settlements of PUCO cases, to the detriment of
10 less empowered parties like residential consumers.

11
12
13 **Q23. DO YOU HAVE RECOMMENDATIONS FOR HOW THE PUCO'S**
14 **SETTLEMENT PROCESS COULD BE IMPROVED TO OFFER MORE**
15 **COMPREHENSIVE CONSUMER PROTECTIONS?**

16 **A23.** Yes. To begin with, the second and third prongs of the PUCO's settlement standard
17 should be modified so that the settlement is not reviewed as a package, but rather
18 each individual provision of a settlement must be scrutinized on its own merits.

²³ *In re Matter of the Application of Ohio Edison Co., the Cleveland Electric Illuminating Co., & the Toledo Edison Co. for Authority to Establish a Standard Service Offer*, Case No. 08-395-EL-SSO, Second Opinion & Order, Concurring in Part and Dissenting in Part Opinion of Commissioner Cheryl L. Robert at 2 (Mar. 25, 2009)

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1 Next, the practice of a utility acquiring signatures for a settlement through the
2 payment of cash and cash equivalent benefits to the signatory party must be
3 stopped. It is interesting to note, in 2015, the PUCO issued an order that put out a
4 strong message cautioning parties against such practice. The PUCO stated: "The
5 Commission notes that provision 1.b. of the Stipulation includes direct payments to
6 intervenors of funds to be refunded to ratepayers. ... [T]he Signatory Parties to this
7 Stipulation and parties to future stipulations should be forewarned that such
8 provisions are strongly disfavored by this Commission and are highly likely to be
9 stricken from any future stipulation submitted to the Commission for approval."²⁴
10 To my knowledge, this cautionary Order from the PUCO has unfortunately not
11 served to deter this practice in subsequent cases.

12
13 ***Q24. IS YOUR TESTIMONY CONCLUDED?***

14 ***A24.*** Yes. But I reserve the right to supplement my testimony in the event that additional
15 testimony is filed, or if new information or data in connection with this proceeding
16 becomes available.

17

²⁴ *In re Application of Columbus S. Power Co. & Ohio Power Co. for Authority to Recover Costs Associated with the Ultimate Construction & Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Order on Remand at 11-12 (Feb. 11, 2015).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Testimony of Edward W. Hill, Ph.D. on Behalf of the Office of the Ohio Consumers' Counsel was served via electronic transmission to the persons listed below on this 17th day of December 2020.

/s/ Christopher Healey

Christopher Healey
Assistant Consumers' Counsel

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in

Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 19-1121-EL-UNC, 20-0680-EL-UNC

Summary: Testimony Testimony Opposing the Settlement and Making Consumer Recommendations of Edward W. Hill, Ph.D. on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.